

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE R. BICKLEY and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-1806; Submitted on the Record;
Issued January 19, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty, as alleged.

On February 14, 1997 appellant, then a 54-year-old full-time clerk, filed a claim for an occupational disease, Form CA-2, alleging that she sustained acute adjustment disorder with anxiety when on January 14, 1997, her supervisor, Robert Ferrell, took her off her bid assignment which she had held for four and one-half years. Appellant stated that she tried to do the new job but she had trouble sleeping, was depressed, "stressed out," confused and suffered anxiety. Appellant missed work from February 3 to 10, 1997 and for a period of time after February 13, 1997. Appellant's supervisor stated that appellant was "still working limited duty for [a] back injury claim" from February 10 through 11, 1997.

In a report dated February 13, 1997, Dr. Marie Anderson-Miller, a clinical psychologist, reviewed appellant's history and noted that appellant's most recent episode of anxiety began when she was switched at work from a job she liked very much and had held for 13 years to another that she neither requested nor desired and one which she felt physically incapable of managing. Dr. Anderson-Miller stated that appellant was also changed from her customary day shift to nights requiring her to adjust from night to day sleep, "a difficult adjustment in general and a particularly likely difficulty for someone 53 years old." She stated:

"[Appellant's] current anxiety-related symptoms appear to be moderately severe, acute and in direct response to an identifiable psychosocial stress, specifically the stress related to her job change. They do not appear to be associated with any other cause such as drug or alcohol use or any other psychosocial stresses and are not consistent with chronic panic attacks. Since her symptoms, in my opinion, appear to be job related and are acute and, at times, debilitating I have encouraged her to request a temporary leave of absence from work."

By letter dated March 7, 1997, the employing establishment responded to questions from the Office of Workers' Compensation Programs, stating that appellant's work assignment and schedule was changed and that her restrictions did not prohibit her from distributing letter mail.

By letter to the employing establishment dated March 20, 1997, Dr. Anderson-Miller stated that appellant was in therapy for assistance with her work-related stress symptoms. She stated that on March 18, 1997 appellant called her office in crisis after having to take sick leave on March 14 and 15, 1997 due to her inability to deal with the stress of her work situation. Dr. Anderson-Miller stated that she was recommending a four-hour shift starting March 20, 1997 because of the difficulty appellant experienced in coping with the stress of working nights.

By decision dated May 23, 1997, the Office denied appellant's claim, stating that the evidence of record failed to establish that the claimed condition arose out of the course of the appellant's employment.

By letter dated June 12, 1997, appellant requested an oral hearing before an Office hearing representative.

At the hearing, appellant testified that as part of the job reassignment her hours were changed from the day shift to the evening shift, and the postmaster told her that her job was not an eight-hour job and that she wanted to put someone with a disability on it which she did. Her replacement, though, worked more than eight hours. Appellant testified that her job was responsible and varied, involving lots of checking of mail distribution and the new assignment involved mostly throwing mail. Appellant testified that she could not sit at night and throw mail. Appellant filed a grievance and arbitration was pending. She stated that on February 3, 1997, she went to work and started having chest pains and feeling faint and went to the hospital that day. Appellant stated that she returned to work after a week and a half and then had another episode of sickness and went to the doctor who restricted her work schedule to four hours a day.

Appellant stated that she had been successful at her job and no one had ever reprimanded her. She stated that after a meeting on May 31, 1997 with the postmaster, herself, and her EEO representative, she was placed back on her regular job and the person who had been assigned her job was reassigned to a job for someone with a disability.

By letter dated February 10, 1998, the employing establishment stated that it changed appellant's job "to make adjustments for the needs of the service," that as a 24-hour operation, most of their mail processing was done on the night shift and they determined that in January 1997 additional help was needed to process the mail before the carriers reported in the morning. The employing establishment stated that "it was determined that the miscellaneous duties that comprised the position held by [appellant] could be absorbed into other positions and her position could be changed to nights, to assist in mail processing."

The employing establishment stated that it told appellant she could bid on other positions when they became available. The employing establishment stated that it returned appellant to her old position because she was not being "productive in her new position due to her numerous medical conditions."

By decision dated March 20, 1998, the Office hearing representative affirmed the Office's May 23, 1997 decision.

The Board finds that the case is not in posture for decision.

The employing establishment's action of summarily removing appellant from her bid assignment is an administrative action and as such, constitutes a compensable factor only if appellant shows the agency abused its discretion.¹ Appellant's emotional reaction arising from the frustration at not being permitted to work in a particular environment is not a compensable factor of employment.² In this case, management's decision to change appellant's work assignment, in itself, is not a compensable factor as it was within management's discretion and there is no evidence of error or abuse.

It is not clear from the record, however, that the new clerk job to which appellant was assigned was within her restrictions. Some evidence of record including appellant's hearing testimony indicates that the new job involved throwing heavy mail. Appellant also testified that the night shift was hard for her and she could not sit at night and throw mail. The Office did not consider whether the clerical job appellant was assigned on January 14, 1997 was within her restrictions. The Office is required to make adequate findings of fact regarding claimed employment factors.³ Further, the Board has held that a change in duty shift may constitute an employment factor if the change in the work shift causes or contributes to appellant's emotional condition.⁴ The Board finds that appellant has established a compensable factor in this regard. Dr. Anderson-Miller's February 13, 1997 report, in which she stated that appellant felt physically incapable of managing the new job and that the change to a night shift was hard for her suggests that appellant's emotional condition of stress induced angina or acute adjustment disorder with anxiety might have arisen from the nature of the work inasmuch as appellant, who was restricted to light duty, felt she could not perform heavy-duty work or work on the night shift. While appellant's testimony and Dr. Anderson-Miller's opinion indicating that the clerical job to which she was assigned was not within her restrictions and the night schedule was hard for her are not sufficient in themselves to establish that appellant's emotional condition is work related, this evidence warrants further development by the Office.⁵ The case must be remanded for the Office to determine whether the job to which appellant was assigned on January 14, 1997 was within her restrictions and whether the change from the day to the evening shift and any change in the job requirements caused her stress-related angina or acute adjustment disorder with anxiety. After such development as the case record warrants, the Office should issue a *de novo* decision.

¹ See *Leroy Thomas*, 46 ECAB 946, 951-52 (1995); *Peggy R. Lee*, 46 ECAB 527, 534 (1995).

² See *Helen P. Allen*, 47 ECAB 141 (1995).

³ See *Elizabeth Pinero*, 46 ECAB 123, 132 (1994).

⁴ See *Elizabeth Pinero*, *supra* note 3; *Peggy R. Lee*, 46 ECAB 527, 534 (1995).

⁵ See *Elizabeth Pinero*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated March 20, 1998 is hereby set aside and the case is remanded for further action consistent with this opinion, to be followed by a *de novo* decision.

Dated, Washington, D.C.
January 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member